

Attorney Docket No. 10139/13801

REMARKS

Claims 8 - 12, 17 - 19 and 21 - 36 have been withdrawn from consideration. Claim 2 has been amended. Claims 2 - 7, 13 - 16, and 20 remain pending in this application. No new matter has been added. In view of the following remarks, it is respectfully submitted that all of the pending claims are allowable.

Claims 2 - 7, 13 - 16 and 20 stand rejected on the grounds of nonstatutory obviousness-type double patenting over claims 1 - 20 of U.S. Patent No. 6,663,632. In view of the terminal disclaimer filed herewith, it is requested that this rejection be withdrawn.

Claims 2 - 7, 13 - 16 and 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. In view of the above amendment to claim 2, it is respectfully submitted that this claim and all of the claims dependent thereon fully comply with § 112 and it is requested that this rejection be withdrawn.

Claims 2 - 7, 13 - 16 and 20 are rejected under 35 U.S.C. 102(b) as anticipated by von Bezold at al (U.S. Patent 4,029, 091).

Claim 2 recites an implant comprising a “coupler having at least two connecting elements for engaging a first member to a second member,” the connecting elements permitting the first member to rotate with respect to the second member and “wherein the connecting elements are pins that are pivot-mounted in the first member.”

In contrast, von Bezold shows a plurality of lugs providing spring-like extensions with each lug supported by a cantilever element 18 which acts as a resilient cantilever. That is, the cantilever elements 18 have a predetermine degree of stiffness and resilience to enable them to act as resilient cantilevers. That is, the stiffness and resilience of the cantilever elements 18 is selected to allow the elements 18 to act as spring flexing in the plane of the body 10 plate upon application of a magnetic field. This allows the lugs 14 to be moved laterally increasing the size of a gap on one side of a lug 14 while decreasing the gap on the other side to alter the longitudinal distance between the lugs 14. (Specification, col. 1, lines 55 - 62 and col. 2, lines 29 - 34). Thus, the cantilever elements 18 are moved laterally in the plane of the plate and alter only

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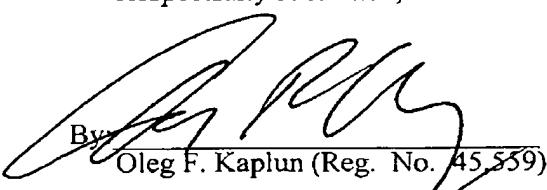
a longitudinal spacing of the lugs 14 without rotating the lugs 14 relative to the plate. Again with respect to the embodiment of Fig. 2, the lugs 14 are supported by cantilever elements 18a and 18b which "provide spring-like elastic suspension and some freedom of movement of the respective lug 14 *in the longitudinal direction.*" (Specification, col. 3, lines 11 - 14). That this longitudinal direction involves no rotation of the lugs 14 is made clear in the figures where arrows 20 represent the longitudinal direction. Thus, the lugs 14 move in a plane of the device along the arrow 20 and do not rotate with respect to the body 10 of the plate.

The cantilever elements 18 of von Bezold are rigidly coupled to the body 10 of the plate and allow the lugs 14 to move only by flexing. No other type of coupling is shown or suggested in von Bezold.

Thus, it is respectfully submitted that von Bezold neither shows nor suggests an implant comprising a "coupler having at least two connecting elements for engaging a first member to a second member," the connecting elements permitting the first member to rotate with respect to the second member and "wherein the connecting elements are pins that are pivot-mounted in the first member," as recited in claim 2 and that claim 2 is allowable. Because claims 3 - 7, 13 - 16 and 20 depend from and, therefore, include all of the limitations of claim 2, it is submitted that these claims are also allowable.

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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